Chung Khiaw Bank Ltd v Bhojwani & Anor

HIGH COURT (SINGAPORE) — SUIT NO 536 OF 1985
COOMARASWAMY J
7 AUGUST 1989

Banking — Guarantee — Conclusive evidence clause — Letters of credit — Non-compliance with terms of credit — Whether discrepancies material or waived by applicant for credit

Evidence — Conclusive evidence clause — Certificate from lending bank's officer to be conclusive of amount owed — Effect of clause

Civil Procedure — Summary judgment — Whether triable issue raised — Whether amounts demanded under guarantee correct — Whether bank accepted correct documents

The plaintiffs are a bank which granted to a firm, K, banking facilities including opening a letter of credit in favour of a party named by the defendants. The defendants who were partners in the firm gave a continuing guarantee ('the guarantee') in favour of the plaintiffs. They jointly and severally guaranteed payment to the plaintiffs on demand all moneys due to the plaintiffs by K, including interest and costs on a solicitor and client basis. The guarantee provided that a certificate from the plaintiffs' officer would be conclusive evidence in any legal proceedings against the defendants. The defendants failed to pay the sum of money demanded by the plaintiffs. Proceedings were started by the plaintiffs and summary judgment was awarded against the defendants. They appealed to the High Court. The defendants claimed that the amount demanded by the plaintiffs was incorrect and that the plaintiffs should not have accepted certain documents tendered by the beneficiary of the credit.

Held, dismissing the defendants' appeal:

(1) The conclusive evidence clause in the guarantee put the matter beyond doubt as to the amount owed by the defendants to the plaintiffs.

(2) In so far as the discrepancies were material, the defendants had in clear and unequivocal terms accepted these. The other discrepancies were quite immaterial and were not sufficient to make the documents non-conforming. The documents appeared on their face to be in accordance with the terms and conditions of the credit.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 12 of 1987.]

Sarjit Singh Gill for the plaintiffs.
LAJ Smith and *VKS Narayanan* for the defendants.

Cur Adv Vult

Coomaraswamy J: This is an appeal by the defendants against a decision of the assistant registrar. The assistant registrar had granted summary judgment for the sum of $1,040,777.48 to the plaintiffs with interest and costs. I dismissed the appeal and now give my reasons.

The plaintiffs are a bank and the defendants were customers of the bank. The first defendant is the husband of the second defendant. At the request of the defendants, the plaintiffs extended banking facilities to a firm called T Kishen & Co. The defendants were partners of the firm.

In the statement of claim, the banking facilities extended were particularized as follows:

Particulars as at 8 January 1985

Facility	Amount owing (inclusive of interest)
	$
(a) Trust receipts	379,442.54
(b) Import bills	355,666.38
(c) Overdraft	305,668.56
	1,040,777.48

It was further pleaded that interest continues to accrue on the aforesaid sums at agreed rates as follows:

Facility	Rate of interest
(a) Trust receipts	1% above the plaintiffs' prime lending rate per annum before due date. 3% above the plaintiffs' prime lending rate per annum after due date.
(b) Import bills	3% above the plaintiffs' prime lending rate.
(c) Overdraft	2 1/2% above the plaintiffs' prime lending rate with monthly rests.

In consideration of these banking facilities, the defendants executed a continuing guarantee in favour of the plaintiffs on 4 August 1982. By the said guarantee, the defendants jointly and severally guaranteed payment to the plaintiffs on demand all moneys due to the plaintiffs by T Kishen & Co, including interest and costs on a solicitor and client basis.

The guarantee further provided in cl 17 that a certificate of the plaintiffs' officer as to the money due from T Kishen & Co shall be conclusive evidence in any legal proceedings against the defendants.

In opposing the application for summary judgment, the defendants' basic contention was that the plaintiffs should not have accepted shipping documents tendered for payment of two letters of credit. They allege that the shipping documents were inconsistent with the terms and conditions of the credit.

Even if the contention succeeds, it ought to be pointed out that this is relevant only to a part of the plaintiffs' claim. The claim is essentially one by a bank against the guarantors of banking facilities extended to a firm in which the guarantors are partners. It seems to me to be an open and shut case of a breach of an on-demand continuing guarantee.

The two letters of credit in question were only one of the various forms of banking facilities extended. The total claim was for $1,040,777.48 of which the letters of credit

account for only $257,630.40. In fact at the hearing of the appeal before me, counsel for the defendants stated that he was proceeding with the appeal only with regard to this portion of the claim which he maintains was not properly claimed.

In any event, I was not satisfied that the defendants had succeeded in showing that there were triable issues. First, the defendants argued that the amounts claimed were incorrect. They said that the amounts shown in the statement of claim were different from what the plaintiffs had informed them earlier on various dates. The simple answer to this is that the interest rates were calculated over a different period of time. The amounts reflected in the statement of claim which was filed on 17 January 1985 included interest for the period up to 8 January 1985 whereas the debit notes sent by the plaintiffs to the defendants reflected interest for different periods of time. In any case, the conclusive evidence clause in cl 17 of the guarantee would surely put the matter beyond argument.

Second, the defendants argued that the plaintiffs were in breach of contract by refusing to establish a local letter of credit. This was said to have caused a substantial loss of business and reputation which entitles them to a counterclaim and set-off. They sought to make much of a purported letter of apology from the plaintiffs which was exhibited as 'KTB-3' in the affidavit of the first defendant filed on 18 April 1985.

However, a perusal of the said letter will reveal that far from being an admission of breach, the plaintiffs in fact explained that their obligations did not include opening a local line of credit. Clearly the allegation of a breach of contractual obligation cannot be sustained.

Finally, the defendants alleged that there were certain discrepancies in the shipping documents presented for payment of the two letters of credit. The discrepancies alleged were numerous. To name a few — shipment had taken place before the issue of the letters of credit, the insurance policy was not indorsed blank and was met from the shipper's warehouse and the certificate of shipment was not signed by the shipowners.

It appeared to me, however, that the alleged discrepancies were in the main quite immaterial and that the defendants were merely trying to confuse the issue by raising them. I was of the view that most of the discrepancies alleged were really trivial in nature and were not sufficient to make the documents non-conforming.

Article 7 of the Uniform Customs and Practice for Documentary Credits succinctly sets out the plaintiffs' obligation at law. It reads:

> Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit.

On the whole, I am of the view that the relevant shipping documents in this case appeared on their face to be in accordance with the terms and conditions of the credit.

In so far as the discrepancies were material, the same were accepted by the defendants. This is with regard to the fact that the certificate of shipment was signed on behalf of the shipowners by Eastern Shipping Agency, not the shipowners themselves. The plaintiffs were advised of this by their correspondent, United Overseas Bank, in London. They in turn reverted to the defendants for instructions and the defendants in clear and unequivocal terms stated that they accepted the said discrepancies.

Having regard to the circumstances of the case, it seemed to me that there were no triable issues at all. There was no reason why the plaintiffs should be denied judgment. Accordingly, I dismissed the appeal and affirmed the judgment which had been granted below.

Appeal dismissed.

Solicitors: *Shook Lin & Bok*; *Swami & Narayanan.*

Reported by *Terence Tan Bian Chye*